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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953.

No. 64.

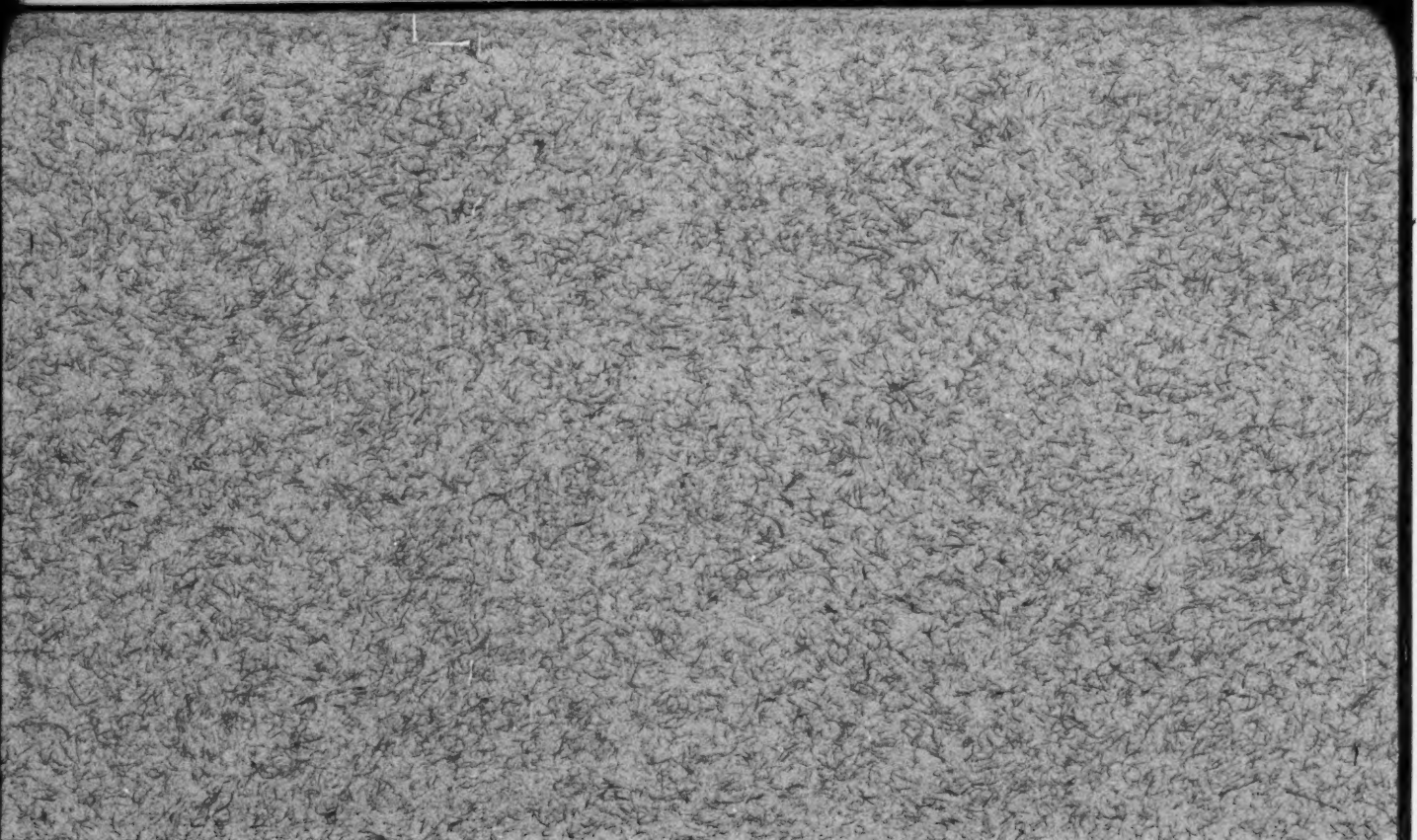
DEL A. FEHSENFELD, JOHN WILKES, JOHN DICKERSON, IRWIN FERREIRA, PAUL DICKERSON, T. W. BEACHBOARD, GENE MEEKS, JOHN PITTMAN, EARL CHAMBERS, V. A. VANCE, MRS. J. L. JENKINS, ELI EDMISTON, MRS. JOHN DICKERSON, ZELLA MOBERLY, ELMER AMMERMAN AND OTHERS SIMILARLY SITUATED, THE INDUSTRIAL STATE BANK, A CORPORATION,
Petitioners,

vs.

IVAN WHIPPLE, ARTHUR C. BROWN, FRANK A. TAYLOR, ANDREW B. CLINE, MALLOY S. HAGEMANN, R. E. AYRAULT, WM. E. MILLER, JOSEPH H. CAUDRON, EVERETT M. WATT, A. D. WING, RAY RUSSELL, JAMES C. MANN, FOR AND IN BEHALF OF THEMSELVES AND IN BEHALF OF OTHERS SIMILARLY SITUATED,
Respondents.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS AND BRIEF IN SUPPORT THEREOF.

PRESTON POPE REYNOLDS,
1310 So. 35th Street,
Kansas City 6, Kansas,
Counsel for Petitioners.



INDEX

Petition for Rehearing on Writ of Certiorari

U. S. Constitutional Questions Presented 2
Grounds for Petition 3
Prayer for Relief 8
Affidavit of Counsel 9

Brief in Support of Petition for Rehearing

Proposition I 11
Argument and Authorities 12
Proposition II 18
Argument and Authorities 18
Proposition III 23
Argument and Authorities 23
Conclusion 28

Table of Cases Cited

Booker vs. Smith, (Ark.) 214 S. W. 2d 513 27
Calvary Baptist Church of Port Huron, Michigan, vs. Shay, (Mich.) 290 N. W. 890 27
Cantwell vs. Connecticut, (1940) 310 U. S. 296 ..... 13, 15
Davis vs. Beason, (1890) 133 U. S. 333 13
Ennix vs. Owens, (Ky.) 271 S. W. 1091 27
Fiske vs. Kansas, 274 U. S. 380, 382 14
Gitlow vs. New York, 268 U. S. 652, 666 14
Honey Creek Regular Baptist Church vs. Wilson, (Ohio) 92 N. E. 2d 419 27
Hughes vs. Grossman, 166 Kan. 325 ..... 13, 14, 16, 18, 20, 22, 25, 26, 27

Keith vs. First Baptist Church of Iowa, 50 N. W. 2d 803 26
Kemp vs. Lentz, (Ohio) 68 N. E. 2d 339 27
Manning vs. Yeager, (Ala.) 82 So. 435 27
Mt. Zion Baptist Church vs. Whitmore et al., 83 Iowa 138 26
Murdock vs. Pennsylvania, 319 U. S. 111, 112, 114, 115 15
Near vs. Minnesota, (1931) 283 U. S. 697 16
Stromberg vs. California, (1931) 283 U. S., pp. 359, 360 et seq. 14
Watson vs. Jones, 13 Wallace 679 14
Whitney vs. California, 274 U. S. 357, 362, 373 14
Zorack vs. Clausen, (1952) 343 U. S. 306, 310 16

OTHER AUTHORITIES

8 A. L. R. 123 27
70 A. L. R. 86 27
U. S. Supreme Court Reports (Annotated), Vol. 96, p. 968 13
Supreme Court Rule 33 23
1st, 5th and 14th Amendments of the U. S. Constitution 14, 15, 16, 18, 19, 21, 25, 26, 27, 28

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Respondents.

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS AND BRIEF IN SUPPORT THEREOF.

To the Honorable Earl Warren, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Come now Del A. Fehsenfeld, John Wilkes, John Dickerson, Irwin Ferreira, Paul Dickerson, T. W. Beach-

board, Gene Meeks, John Pittman, Earl Chambers, V. A. Vance, Mrs. J. L. Jenkins, Eli Edmiston, Mrs. John Dickerson, Zella Moberly, Elmer Ammerman and others similarly situated, The Industrial State Bank, a corporation, Petitioners, of Kansas City (Wyandotte County), Kansas, and respectfully pray for a Rehearing, under Rule 33, of the Rules of the Supreme Court of the United States, on the Order of October 12, A. D. 1953, by the United States Supreme Court, dismissing the Petition previously filed by your petitioners herein, praying for a writ of certiorari to the Supreme Court of the State of Kansas, to review a decision and judgment rendered by the Supreme Court of Kansas, on November 8, A. D. 1952 (finally entered against your Petitioners herein after overruling their said Motion for Rehearing on December 12, 1952), the opinion of the Kansas Supreme Court affirmed an order entered by the District Court of Wyandotte County, Kansas, Division 4, on August 4, 1950.

That the Constitutional Questions, raised in the accompanying petition for rehearing, and presented therein, in order, are:

UNITED STATES CONSTITUTIONAL QUESTIONS PRESENTED.

I.

Is the Kansas Supreme Court by its ruling herein, in effect, forcing on Baptists A NEW form of religion in Kansas, in violation of the FIRST and FOURTEENTH Amendments?

II.

Is the Kansas Supreme Court interfering with the "Free Exercise" of religious belief and opposing "Separa-

tion of Church" and State in Kansas, in opposition to the guarantees of the FIRST and FOURTEENTH Amendments?

III.

Is the Kansas Supreme Court invading the rights of Kansas Baptists to "due process" of law under the FIFTH and FOURTEENTH Amendments?

That the allegations herein below set out, by these petitioners, are affirmatively and respectively set forth in the following

PETITION AND PRAYER.

1.

That, upon the filing by petitioners herein of Application, under United States Supreme Court Rule 33, for an extension of time, within which to prepare and file their petition for a rehearing on this Court's dismissal, on October 12, 1953, of petition for a Writ of Certiorari to the Kansas Supreme Court, Mr. Justice Tom C. Clark did on October 26, 1953, grant your petitioners an extension up to and including November 26, A. D., 1953, within which to file petition for rehearing tendered herewith for filing herein; that no reply or response was ever made by Respondents to this petition, after service of same with brief upon respondents' attorney who defaulted therein.

2.

That your petitioners, as American Citizens and as Kansas Baptists, find themselves, and those fellow Baptists in all of whose interests this petition for a rehearing and also that for a writ of certiorari, because "similarly

situated," were filed, a voting *majority* of the members of the Argentine Baptist Church of Kansas City, Kansas, were deprived of their *absolute* rights under the Constitution of the United States of America to the protection of the guarantees of the 1st Amendment (Article I, of the "Bill of Rights"), safeguarding their individual and collective rights to the "FREE EXERCISE" of their conscience in religious beliefs, restriction of or interference with which is *unconditionally forbidden* to Congress in said Amendment, vouchsafing *freedom of worship* to *every* American citizen; that such safeguards are now extended (and have been, by U. S. Supreme Court interpretation and ruling since 1868), applying the 14th Amendment, to prevent any State of the Union from legislating to dictate or inhibit *religious freedom* to any citizen of this Republic; that such limitations likewise preclude the accomplishment of such prohibited interference not only by a State or other lawmaking body but by State Judicial fiat, decree or decision.

2.

That, by a decision on August 4, 1950, in the District Court (Division 4) of Wyandotte County, Kansas, the *majority* of the members of the Argentine Baptist Church aforesaid were ousted, without a church trial, and "perpetually enjoined," by the presiding judge from ever being members of that church again (a prerogative belonging alone to the members thereof, by Baptist faith and practice, and under that Church's Constitution; that this seeming interference, by the trial judge, with the "free exercise" of the members' religious rights under the 1st Amendment aforesaid, was sustained by the Kansas Supreme Court, as above set out, in a ruling on November 8, 1952, upholding a similar ruling in another Kansas Baptist church case (of widely differing facts) in 1949; that these petitioners respectfully urge that:

(a) They have been denied "free exercise" of their individual right of *absolute* "free exercise" of their religious convictions by being deprived of their assertion of Baptistic rights of individual local church autonomy in this or any other Baptist church now in Kansas, or to be here (while this State ruling exists); also deprived of the the right to rule their church's affairs by majority vote of the members; and further, to be forced, by Kansas Supreme Court edict, to act by UNANIMOUS Vote only on the church's policy and acts or *forfeit their property* to the minority by abolishing every Kansas Baptist Church's democratic (or congregational) form of governing its business affairs and property as set out in the following telegram from Dr. L. D. Gray, of Louisiana, on October 4, 1952, while he was president of the Southern Baptist Convention, representing 7,000,000 Baptists in over 30,000 Baptist churches in the 20 states in the United States (included as an Exhibit herein).

WESTERN UNION

KB 164 NSA342

NS.LLH181 NL PD=NEWORLEANS LA 4 =

1952 OCT 4 PM 2 00

IT IS THE UNIVERSAL PRACTICE OF BAPTISTS TO RECOGNIZE THE MAJORITY VOTE IN BUSINESS CONFERENCES AS FINAL AUTHORITY. OUR BASIC CONCEPT OF DENOMINATIONAL LIFE IS PREDICATED UPON THE AUTONOMY OF THE LOCAL CONGREGATION. IN A REGULAR OR CALLED CHURCH CONFERENCE WHEN MATTERS ARE VOTED UPON THE MINORITY ARE OBLIGED TO ABIDE BY THE MAJORITY VOTE OF MEMBERS PRESENT AND VOTING. I KNOW OF NO BAPTIST CHURCH ANY

WHERE THAT DOES NOT ACCEPT THIS VIEWPOINT=

J. D. GREY, PRESIDENT,
SOUTHERN BAPTIST CONVENTION=

(b) That, by striking down, in the two said Kansas Supreme Court decisions, Kansas Baptists' *freedom of conscience,* Worship and Church Government, and substituting an *unheard of, untried, unBiblical* form of faith and church government wholly contrary to Baptist practice, procedure, tradition and usage, over centuries, and ordering Baptists to exercise their voluntary rights of *affiliation, non-affiliation* or *withdrawal* from Co-operative "Conventions," only by UNANIMOUS Vote, thus abolishing Majority rule by a Baptist church's members, the Kansas Supreme Court has, these petitioners aver, undertaken by Court order, to establish and enforce a *new* alleged form of "Baptist belief and practice," thereby attempting judicial establishment of a *new religion,* in contravention of the restrictions that are set out in the 1st Amendment, made likewise applicable to the States, by the 14th Amendment, which had nothing to do with granting such *absolute* right, and *cannot* take same away.

3.

That these petitioners further allege they are asking this Court to reconsider their said dismissal of petition for writ of certiorari, since the entry on November 8, 1952, of what, at first appeared to be the FINAL ruling of the Kansas Supreme Court in the instant case, counsel for these petitioners found undeniable proof that serious errors and omissions had been made in Page 1, of the Official Statement of the Caption, Syllabus and Opinion which errors had been published in the Kansas Court Reporting publication (*Advance Sheets,* by name); that certain thereto-

fore named defendants or appellants (some of your petitioners herein) had been omitted from the final judgment of the Kansas Supreme Court, and some, fictitious and non-existent, had had judgment rendered against such by the Kansas Supreme Court.

4.

That, further official mandate had already been issued on December 15, 1952, by the Kansas Supreme Court to the trial (District) Court of Wyandotte County, and executions for costs had been issued, presented and recorded by the Clerk of the District Courts of Wyandotte County, Kansas, Richard D. Shannon, just as though the aforesaid factual errors, omissions, and fictions had not occurred; that, upon urging of counsel for these petitioners of these inaccuracies, Justice Parker, who wrote the opinion of November 8, 1952, reluctantly made the record certify correctly the proper parties, eliminating also the non-existent parties, against whom he and his six colleagues of the Kansas Supreme Court had rendered judgment, as above set out; that Justice Parker ordered the rewriting of Page 1 of the record to correct same, and thus a vital "change" was made in the first page of the caption, syllabus and opinion when applying for a certified copy of opinion, etc., to be filed for filing with the United States Supreme Court Clerk filed in April, 1953; that petitioners have cogent reason to believe that the other 6 judges of the Kansas Supreme Court did NOT participate in and approve such "changes" or amendments, and that no new, proper and corrected mandate has been issued, certifying these "changes" by Justice Parker, author of the opinion of November 8, 1952,

5.

These petitioners aver; that, after the dismissal, on October 12, 1953, of the petition for writ of certiorari herein, on October 21, 1953, the said District Court Clerk, Richard D. Shannon, issued executions for costs, apparently on the old mandate, before the said "changes," and the Sheriff of Wyandotte County ordered to collect costs of some of these petitioners under the old mandate; that these petitioners aver that such an attempt to secure money or property from such petitioners is premature, illegal and is an *interruption of* and *departture from "due process of law,"* and that such "gap" brings into operation the 14th Amendment, guaranteeing such "due process" of law and is hereby timely invoked to protect these petitioners from unconstitutional property confiscation, and that such "chaotic situation" in this instant case, in Kansas, justifies this Court's reinstatement and allowance of said writ of certiorari.

PRAYER.

Wherefore, the petitioners, as above set out herein, each for himself, respectfully pray that a rehearing on application for a writ of certiorari be granted and that the writ of certiorari, previously filed, be heard and granted to the Supreme Court of the State of Kansas, (required portions of transcript of the proceedings in No. 38,270 and of the Abstract of Appellants and the Counter Abstract of Appellees being already certified to this Court), and that the decision of the Kansas Supreme Court be reversed and/or modified by this Honorable Court and that your Petitioners, and each

of them, have such other and further relief in the premises as to this Honorable Court may seem meet and just.

PRESTON POPE REYNOLDS,
1310 So. 35th St.,
Kansas City 6, Kansas,
Counsel for Petitioners.

The State of Kansas, County of Wyandotte, ss.

Be it remembered that before me, a notary public in and for said State and County aforesaid, on this day personally appeared PRESTON POPE REYNOLDS, of lawful age, known to me, who, upon his oath, states that he is the attorney for the Petitioners named in the foregoing petition for rehearing on the writ of certiorari; that he has read the same; that he was present when Justice Parker agreed to make the "changes" aforesaid, in the interest of accuracy and truth; that he made such "changes" and delivered to this counsel the next morning the corrected page 1 of the caption, syllabus and opinion of November 8, 1952, and the allegations are true to the extent of his knowledge and belief; that he is an ordained Baptist minister and knows the Court's ruling violates Baptist doctrine and customs and that this petition is not filed for delay; also, that he is licensed to practice before the Supreme Court of the United States; that, though served, the attorney for respondents defaulted in filing his reply to petitioners' petition and Brief filed herein, as required by the United States Supreme Court rules.

Preston Pope Reynolds.

Sworn to and subscribed before me on this 24th day of November, A. D. 1953.

(Seal) Notary Public.

My Commission expires:

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Respondents.

BRIEF IN SUPPORT OF THE PETITION FOR REHEARING OF WRIT OF CERTIORARI.

PROPOSITION I. The Kansas Supreme Court's Abolition of customary majority rule in Kansas Baptist Church,

is, in effect establishing or forcing, on Baptists, a new form of religion or doctrine, is a violation of the 1st Amendment to the U. S. Constitution, made binding upon the States by the 14th Amendment, prohibiting establishment of any religion by any state.

Argument and Authorities.

The United States of America was founded upon *FAITH IN GOD!*

The United States, by the 1st and 14th Amendments, GUARANTEES EVERY citizen that his or her ABSOLUTE right of freedom of religion and worship shall be kept unsullied and free from any Civil Court interference throughout the American Union.

The United States Supreme Court long has been the all-wise Creator's instrument to keep those sacred rights INVIOLATE in ALL the states.

The above religious safeguards of the U. S. Constitution against any states' *changing, restricting* or defying the 1st and 14th Amendments have been disregarded by the Kansas Supreme Court, these petitioners believe.

This petition for a rehearing on the petition for writ of certiorari is the LAST CRY FOR LIBERATION, by TENS OF THOUSANDS of Kansas Baptists, male and female, to deliver them from this new "SLAVERY" by Court edict, as they believe.

These petitioners respectfully ask this Court, individually (including the Honorable Chief Justice, Earl Warren, of California, a state so eloquent in its viewpoint and decisions for safeguarding religious freedom and insisting upon the American Constitutional doctrine of "Separation of Church and State," (who did not participate in the

reputed *per curiam* action of dismissal of the petition for Writ of Certiorari herein), to examine the record in the instant case.

The "Supremacy" clause of the United States Constitution governs legislatures (of both Congress and each State) and the people, who must amend such to limit or extend it.

"The First Amendment forestalls by law the acceptance of any creed or the practice of any form of worship. On the other hand, it safeguards the *free exercise* of the chosen forum" (U. S. Supreme Court Reports (Annotated), Vol. 96, p. 968).

"The First Amendment reflects the philosopy that Church and State should be separate, neither the Federal Government nor the State can pass laws which aid one religion * * * or prefer one religion above the other" (*Ibid.*, p. 970).

"Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law, as to beliefs, but only practices" (*Ibid.*, pp. 672-673), citing *Cantwell* v. *Connecticut,* (1940) 310 U. S. 296.

The decision in the instant case citing the same conclusion in *Hughes* v. *Grossman,* 166 Kan. 325, interferes with an individual Baptist Church's members in their United States Constitutional "free exercise" by the 1st and 14th Amendments of their religious convictions by saying that the voluntary exercise of the practice of joining a Co-operative Convention is LOST to them AFTER they affiliate with and send messengers to such convention (See *Davis* v. *Beason,* (1890) 133 U. S. 333). If Baptists are *free* to JOIN, by what logic can a Civil Court declare that that "free exercise" becomes their PENALTY, if they WITH-

DRAW and costs the Church (and *Majority*) their rights of collective Church ownership of their property?

In both the *Hughes* v. *Grossman* case (166 Kansas 325), and the instant case, Justice Parker and his colleagues of the Kansas Supreme Court, held, in effect, that a MAJORITY vote by Baptists belonging to a local church MEANS NOTHING legal or regular, if they so withdraw from a Convention (National, State or otherwise), but that it must be a *UNANIMOUS* vote by the members present.

This conclusion is flatly contradicted by the U. S. Supreme Court (*Watson* v. *Jones*, 13 Wallace 679), declaring:

> "In the absence of any breach of trust, express or implied the majority rule prevails in independent and congregational societies which have no organic connection with ecclesiastical bodies (like Congregational or Baptist denominations) not only in the religious domain * * * but over civil property and property rights."

In an appeal from the District Court of Appeal of California, *Stromberg* v. *California*, (1931) 283 U. S., pp. 359, 360 *et seq.*, in a majority opinion delivered by Mr. Chief Justice Hughes said:

"It has been determined that the conception of liberty, under the *due process* clause of the Fourteenth Amendment, embraces the right of free speech," citing *Gitlow* v. *New York*, 268 U. S. 652, 666; *Whitney* v. *California*, 274 U. S. 357, 362, 371, 373; *Fiske* v. *Kansas*, 274 U. S. 380, 382.

In like manner, maintenance of opportunity for religious freedom (Articles 1 and 14, of the U. S. "Bill of Rights") by lawful means, is a fundamental principle of

America's Constitutional system. "This is an opportunity essential to the security of our republic." Any statute or ruling, contrary to the fair use of the right of religious freedom is repugnant to the guarantees of the First and Fourteenth Amendments.

Chief Justice Hughes raised the point on which the majority opinion was based because justice demanded it, though the record did not show it. (Such is true, in part, in the instant case.)

So, Mr. Justice Hughes joined by the majority of the U. S. Supreme Court ruled that a statute that was violative of the Federal Constitution could not be upheld (p. 368, (*ibid.*). Likewise State Courts *cannot* so rule without violating U. S. Constitutional guarantees. In *Murdock* v. *Pennsylvania,* 319 U. S. 111, 112, 114, 115, in an able opinion Mr. Justice Douglas, holds that if a law, municipal or otherwise, restrains, in advance, the constitutional liberties of religion (and of the press), and inevitably tends to suppress their exercise for these liberties are in a *preferred* position under the First Amendment (pp. 114, 115).

Herein it is also pointed out that the privilege (of religious freedom) is guaranteed by the Federal Constitution and exists *independently* of State authority (p. 115).

In *Cantwell* v. *Connecticut,* (1940) 310 U. S. 296, on certiorari to the Supreme Court of Errors of Connecticut, it was held that any enactment by a state, infringing upon the fundamental concept of freedom of conscience and religious belief, as embodied in the liberty guaranteed under the First Amendment, is prohibited by the Fourteenth Amendment, because such is an *absolute* guarantee (pp. 303, 304); also, that where property is taken from one, by imposing a previous restraint, by *judicial decision,* upon the free exercise of religion by deprivation of liberty *with-*

out due process of law is as obnoxious under the U. S. Constitution as restraint by administrative action (pp. 304, 306), the opinion in such case, delivered by Mr. Justice Roberts, declaring, "In every case the power to regulate must be so exercised as not, in attaining a permissible end, to infringe unduly the protected freedom" (p. 304), and "not leave to the executive and *judicial branches* too wide a discretion in its application" (p. 308); also citing *Near* v. *Minnesota,* (1931) 283 U. S. 697; *Zorack* v. *Clausen,* (1952) 343 U. S. 306, 310.

These petitioners are deprived, by the opinion of Justice Parker and his colleagues on the Kansas Supreme Court, of the right to "*free exercise*" of their religious freedom, according to the dictates of their conscience as Baptists; by being compelled and coerced, by the *Hughes* v. *Grossman* ruling, cited above, and the ruling in the instant case (promulgated by the entire Kansas Supreme Court in November, 1952, as naming only a part of these petitioners, including "imaginary" ones, changed by Justice Parker alone five (5) months later by adding names first omitted) such opinion ordering *abandonment* of the Biblical, *age-old traditional tenets and principles* of Baptists and their conformity to a *new un-Baptistic "dogma,"* proclaimed by Civil edict in Kansas alone, in spite of the contrary U. S. Constitutional guarantees in the First, Fifth and Fourteenth Amendments.

The Kansas Supreme Court has thus, in effect, *re-written* the tenets and prescribed new practices for *ALL* Kansas Baptists, and ordered them to follow that Court's dicta, otherwise Kansas Baptists (a) will forfeit their property; (b) that Kansas Baptists must now either amend their beliefs in (1) the autonomy of the local Baptist church, (2) abolish the democratic government by a Baptist Church's members, (3) or abrogate

the centuries-old MAJORITY rule (or vote) in a Baptist church's meeting and business affairs; (4) give up every local Baptist church's *prior voluntary* affiliation with Baptist co-operative bodies, groups or "conventions," or (c) *be stripped* of its church property, obtained through the tithes and offerings of its members, while Kansas Civil Court *fiat* hands it over to the rebellious, defeated *minority*, whose beliefs are *NO DIFFERENT* from those of the majority in the church membership.

(a) In the instant case, grounds for the ruling were contradicted by every scintilla of testimony, particularly, as follows:

(1) Rev. Randle R. Mixon (then President of the Kansas Baptist Convention (Northern)) and a witness *hostile to these petitioners* (then "defendants" in the trial court) when asked the following question by defendants' attorney:

> "Does the Kansas Baptist Convention *have a rule* that local Baptist Churches *cannot withdraw* from the Kansas Baptist Convention *without* the UNANIMOUS vote of the members of the Church?"

Defendants' Abstract, page 118, on file in this Court, original transcript, p. 619, cc. 1-7, Witness Mixon answered,

> *"IT DOES NOT"* (Defendants' Abstract, page (2)). When Witness Mixon (page 118 of Defendant's Abstract (original transcript, p. 622) was asked:
>
> "Does the Northern Baptist Convention or the American (Northern) Baptist Convention *have a rule* that a local Baptist Church cannot withdraw from the Northern (American) Baptist Convention without the UNANIMOUS vote of the members of the church?" The witness answered, *"NO"* (Defendants' Abstract, p. 118). Original Transcript, verified by plaintiffs' Counter abstract (United States Supreme Court printing, pages 199, 200).
>
> (All other trial testimony verifies these answers.)

(2) In the pre-trial statement of facts (Defendants' Abstract, p. 59, original transcript, p. 12), Denial No. 2, is by Defendants, who, at no time, agreed that the Argentine Baptist Church could withdraw from the Northern or Kansas Baptist Conventions or the Missouri Valley (Northern) Association ONLY "by UNANIMOUS vote. In other words, the Denial is, that a UNANIMOUS vote is NOT required to so withdraw, the foregoing all making the trial Judge's No. 2 of "Findings of Fact" (Defendants' Abstract, p. 23) *contrary to the facts and record*, and so also affects the accuracy of the trial judge's "Conclusions of Law" (Defendants' Abstract, p. 26).

PROPOSITION II. The Kansas Supreme Court's penalty of loss of their property by a Baptist Church's "Convention" withdrawal by a MAJORITY vote of the members present PREVENTS Kansas Baptists' "FREE EXERCISE" of their own religion is a violation of the 1st Amendment to the U. S. Constitution made binding upon the States by the 14th Amendment, and MIXES "Church and State."

Argument and Authorities.

The Kansas decision, including that presented herein for trial, as well as complained of, appears not to be an attack on these petitioners only on the regular, usual, traditional faith and practices of ALL Baptists from their beginning, as they are in accord with New Testament teachings; that by the *previous restraint* imposed upon *Grossman,* (January, 1949) 166 Kan. 325, your petitioners herein have been deprived of their *absolute* right of reconstituting the *majority* of the church's membership, under the *"due process"* clause of the Fourteenth Amendment, in that.

These petitioners are enslaved by a State Supreme Court's decision that is tantamount to holding that it is *THE LAW IN KANSAS* to do what the Kansas Supreme Court decrees they MUST, though it changes their regular, basic doctrines, stultifies their *individual* and *collective* conscience and takes their church property *without due process of law,* the U. S. Constitution's 5th and 14th Amendments, with its "Bill of Rights" to the contrary notwithstanding.

These petitioners, and their fellow church members, consisting the voting *majority* of the Argentine Baptist Church, according to the record in this cause before this Court, are forbidden by the Kansas Supreme Court's upholding the "anti-conscience" *perpetual injunction* of the Wyandotte County District (trial) Court, forbidding that anyone of the majority (your petitioners) and their fellow members of the church's voting *MAJORITY* of the Argentine Baptist church from *ever belonging to that church again.*

These petitioners, and those of like mind were driven, like cattle, out into the storm, with no haven in which to worship, and no church home, to shift for themselves, like friendless outcasts and penniless waifs, all because they dared *to follow and adhere* with their conscience to the *regular, fundamental and religious beliefs* and *not change* them, to suit a Northern Baptist *minority* clique in the Argentine Baptist Church.

The petitioners herein file, and continue to respectfully urge upon this honorable Court, this petition for rehearing, assuredly *the last hope and frontier* of their ancient faith and Biblical convictions, bespeaking their pitiful plight, as they plead anew for this Tribunal's protection of their U. S. Constitutional guarantees aforesaid,

for them, their children and generations of Kansas' American citizens yet unborn.

These petitioners urge that the Kansas decisions, directed, in the *Hughes* v. *Grossman* case, against a Kansas Fundamental Baptist Church, of Ottawa, Franklin County, Kansas, and the Argentine Baptist Church, of Kansas City, Wyandotte County, Kansas, in effect, the instant case, herein against Kansas Southern Baptists, would in effect, seem to unwittingly further an intimidation "scheme" of a few more Northern Baptists to drive the Fundamental and Southern Baptist groups out of Kansas, to which edicts, if these aggrieved Baptist groups, numbering many *THOUSANDS* of Baptists in Kansas, bowed supinely and (a) *surrendered* their basic religious faith; (b) *abandoned* their devotion to "Separation of Church and State" in America (achieved by Baptists, historically, for every faith and citizen of America); and (c) *ceased to contend* before this Court, for their *absolute* U. S. Constitutional guarantees aforesaid, they would prove themselves *unworthy* of these sacred Constitutional guarantees against *enforced and abridged religious* worship and the *"free exercise"* thereof, and the establishment of a religion by order of a State Court, such as the Baptists are now shackled with in Kansas.

That, if the alleged "changes," made by Justice Parker of the Kansas Supreme Court, in page 1, of the Court's caption, syllabus and opinion of November, 1952, as certified to for transmittal to the Clerk of the Supreme Court in April, 1953 (such alterations being made about five (5) months AFTER the rendition of the November (1952) opinion and the Court's overruling Appellants "Petitioners" herein) on December 12, 1952, were such "changes" as would alter the legal effect of the former "Page 1, of the November (1952) caption, syllabus and opinion, then there

is there not now any *proper* mandate in the hands of the District (trial) Court of Wyandotte County, Kansas?

These petitioners earnestly aver that this is not a customary or puny church "fuss"; that its true issues challenge those who would disregard the guarantees of the 1st, 5th and 14th Amendments to our United States Constitution, for

1. Democratic rule by a Baptist Church's membership, present and voting, is *basic and fundamental,* and their autonomy is basically administered only by *majority vote;* and any other tenet, custom, principle, practice or usage is *unknown* to Baptists.

2. All Baptist groups, true to these tenets as set out in Appendix 73 (pp. 40-41, in Petition and Brief, on file herein), adhere to these principles and practices, all of them being incorporated in the original page 1 of the caption, syllabus and opinion of the entire Kansas Supreme Court of November, 1952, and in the amended page 1 of the caption, syllabus and opinion by Justice Parker about 5 months later in April, 1953, as elsewhere referred to herein.

No. 9 in Appendix B being designated as "Baptist" Doctrines, Tenets, Customs, Usages, Traditions and Practices) reads:

> "Each particular and individual Baptist Church is *actually* and *absolutely* independent in the exercise of all its churchly rights, privileges and prerogatives, independent of *all other* churches, individuals and *bodies of men* whatever, whether State of Sectional Baptist Conventions, Northern, Southern, American, National or otherwise."

We also respectfully call this Court's attention to all other contents of above "Doctrines, Tenets," etc., of

Pages 40 and 41 of your petitioners' petition for certiorari and Brief on file herein, particularly, to No. 3 thereof; also to *NOTE,* at the bottom of Page 41 thereof.

3. This decision of the Kansas Supreme Court, if not successfully challenged in this action could be seized on as the means of overthrowing our bulwarks of *religious liberty* and *separation of church and state* in all 48 of the States of the American Union. The ringing official challenge on October 4, A. D. 1952, of Dr. J. D. Gray, of New Orleans, Louisiana, then President of the Southern Baptist Convention (which comprises 7,000,000 Southern Baptists and over 30,000 Baptist Churches in 20 or more States of our Nation) is set out in the telegram above at pages 5-6 of the Petition in Section 2(a), proclaiming *autonomy* and *majority rule* as the *only known* Baptist tenet on *voting procedure.*

4. Thousands of names of American men, women and young people of Kansas from Baptist Churches, large and small, throughout Kansas, have been signed in their own handwriting, asking Supreme Court relief from this enslaving ruling by the Kansas Supreme Court, under their U. S. Constitutional right of petition for redress.

5. Many Kansas Baptist congregations are afraid to build churches in that State today because of their fearfulness over the Kansas Civil Courts' domination. The dismissal of this petition herein on October 12, 1953, has had the depressing effect of shock and dread for the future of the Baptist faith in Kansas, unless this Court grants relief from "judicial oppression."

6. That there is no *known* tenet, tradition, precedent, principle or usage among Baptists for the "UNANIMOUS" doctrine, promulgated by the Kansas Supreme Court (in the *Hughes* v. *Grossman* case cited *supra*) and applied (or repeated) in their decision in the instant case, and

refusal of the eminent Court herein to grant rehearing and grant the writ of certiorari herein, will attempt to *coerce* all Kansas Baptists into giving up their customary MAJORITY rule and democratic autonomy, and putting into force the Kansas Supreme Court's religious orders for unanimous rule.

PROPOSITION III. The Kansas Supreme Court's ordering the MAJORITY of members of Kansas Baptist Church to surrender their church property to a MINORITY, where there has been NO CHANGE in basic doctrines is a violation of the "DUE PROCESS" clauses of the 5th and 14th Amendments to the U. S. Constitution.

Argument and Authorities.

That since the dismissal of the Writ of Certiorari of Petitioners, on October 12, 1953, and *before* the expiration of the 15 days allowed by Rule 33 of the United States Supreme Court, under which petitioners had the right of applying for additional time in which to file a petition for a re-hearing (granted herein on October 26, 1953, by Mr. Justice Clark), an attempt was made, at the behest of respondents, to close the instant case by trying to force collection of court costs, by execution, issued by Richard D. Shannon, on October 21, 1953, 7 days before expiration of the time allowed under Rule 33 aforesaid for filing rehearing petition, and delivered for levy on petitioners and/or their property by the Sheriff of Wyandotte County, Kansas, from the petitioners, thereby prematurely interfering with that step, so inseparable from their rights of "due process," specified in Articles V and XIV of the "Bill of Rights" of the United States Constitution, AFTER the dismissal of said Writ of Certiorari herein but BEFORE final disposition of said Writ by this Court.

That no *new* mandate has been issued by the Kansas Supreme Court to the Wyandotte County District Court since the alleged "charges" made on page 1 of the Court's caption, syllabus and opinion by Justice Parker in the instant case as set out elsewhere in this petition.

That, if the former mandate specified certain "Appellants," who had been "left out," by name, in the first page of the caption, syllabus and opinion of November (1952) would such mandate (issued by the Kansas Supreme Court on or about December 15, 1952) would have any legal force and effect against some of the appellants omitted by the Kansas Supreme Court from Page 1 of the November (1952) version of the Court's opinion even, though included in the Court's amended Page 1 thereof (about five (5) months AFTER Page 1 had been written BEFORE the alleged "changes" by Justice Parker)?

That, if such "changes" and addition of specifically "named" appellants in the amended page 1 of the *First* opinion, not actually set out in page 1 of the caption, syllabus and opinion of November, 1952, do actually change the legal content and effect of said opinion (5 months later) from its import (as page 1 was *first written* in November, 1952) then is not this "change" on the first page 1 thereof, a deprivation of the guarantees due certain of these "appellants" (therein)—"petitioners herein—under the 5th and 14th Amendments *"due process of law,"* as guaranteed by the 5th and 14th Amendments to the United States Constitution?

Also, can imaginary "appellants," non-existent individuals, as named in the Kansas Supreme Court's Page 1 of the caption, syllabus and opinion of November, 1952, be *changed* to include *previously* named individuals; *actually omitted, by name,* specially, and then the *old* mandate be made to apply to them, when no *new mandate* has been

issued, including and actually naming now those omitted, by error.

If this is a "hiatus" in the legal and/or equitable chain of U. S. Constitutional "DUE PROCESS," *where* do these petitioners stand as to their joint and several status, in the light of Articles 5 and 14 of the United States "Bill of Rights"?

And, if the said guarantees of the United States Constitution have been uprooted or "due process" disregarded by the "changes" alleged in page 1, in the November (1952) caption, syllabus and opinion is not that a *sufficient cause* for the United States Supreme Court to grant a rehearing herein and to grant the Writ of Certiorari prayed for herein?

With this august tribunal's wonted and traditional scrutiny, as guardian of every American citizen's U. S. constitutional rights and guarantees of religious freedom, due process of law and forbidden discrimination against any citizen or group, and remand this cause for trial in its original form, and abrogate and nullify, the Kansas Supreme Court's ruling, as it now appears to have been reached? If this procedure by the Kansas Supreme Court's Justice is, in effect, irregular, or not justified without the full Court's approval, can the stream of justice ever be purified save by trial *de novo ab initio?*

This *new revised version* of Baptist Doctrines and practices appears in the legal creation of Justice Parker *et al.,* who wrote the *Hughes* v. *Grossman* opinion in 1949, and *re-wrote* and re-approved his former ruling in the instant case in 1952, in effect, setting up a NEW Baptist "faith and practice," *hitherto unknown* to real Baptists, who know the Bible, with his honorable colleagues participating in the November (1953) opinion, in its entirety.

In effect, the Kansas Supreme Court is warning the members of every Kansas Baptist Church, that they must conform to that Tribunal's interpretation of what are Baptist doctrines and customs or *lose their churches;* that Baptists must abandon the *MAJORITY VOTE* and accept the UNANIMOUS VOTE, otherwise a *minority* of *ONE member* WILL get the property of the church, if ALL the other members want to *withdraw* their church from any convention with which they previously voluntarily affiliated with, thus, any "spy" could reap "a harvest" of that church's property; that the Kansas Supreme decision, if left to stand, will encourage perfidy, these petitioners verily believe. Is this "due process" of law, under the 5th and 14th Amendments?

The Kansas Supreme Court says WITHDRAWAL is a change of DOCTRINES, and fundamental basic Baptist Custom and usage. The fact is that it is *voluntary choice* by a Baptist Church to join a Convention, WITHDRAW from it or remain independent and unaffiliated that is *the* Baptist custom, usage or characteristic. Not a word of testimony in the record shows that Rev. Fehsenfeld ever advocated or undertook ANY change, any particular in Baptist doctrines, customs or usage, but only changed administrative details by *majority* vote of the Argentine Baptist Church were made by regular Baptist procedure as the record before this Court attests.

The Iowa Supreme Court, which proclaimed the doctrine of "the *faithful* minority," in *Mt. Zion Baptist Church* v. *Whitmore et al.,* 83 Iowa 138, on which Justice Parker relied in writing his *Hughes* v. *Grossman* opinion (1949). But in January, 1952, the *Iowa Supreme* Court in *Keith* v. *First Baptist Church of Iowa,* 50 N. W. 2d 803, in a case *exactly in point of fact* with the instant case, stated that WITHDRAWAL from a "Convention," was not a CHANGE

of basic Baptist doctrines or customs, and that its former decision on "the faithful minority" did not apply.

> "A Baptist church is a pure democracy. It is *controlled by its own membership,* and it is *absolutely independent of any external control.* It is *not subject* to any *supervisory* power, *ecclesiastical or otherwise.* The ministers who testified for plaintiffs were emphatic in their statements as to the complete independence of the local church. They stated: 'The Baptist church has been spoken of as the truest of Democracies, in that the majority in a Baptist Church may determine definitely what the policy of that particular church will be as to affiliation * * * The whole picture, the whole gist of the thing, and the whole basis for the Baptist denomination, *is the individual church,* but *its majority* vote is *supreme* * * * From the beginning the Baptist Church has *retained and refused* to give up *its independence.*"

But Justice Parker seemingly ignored—and his colleagues seemingly the new Iowa ruling (set out in detail, pp. 31, 34, of petition and brief on file herein). And, particularly the three paragraphs on page 33 together with authorities cited at the bottom of that page, which are: (8 A. L. R. 123; 70 A. L. R. 86; *Booker* v. *Smith,* (Ark.) 214 S. W. 2d 513; *Honey Creek Regular Baptist Church* v. *Wilson,* (Ohio) 92 N. E. 2d 419; *Ennix* v. *Owens,* (Ky.) 271 S. W. 1091; *Manning* v. *Yeager,* (Ala.) 82 So. 435; *Calvary Baptist Church of Port Huron, Michigan,* v. *Shay,* (Mich.) 290 N. W. 890; *Kemp* v. *Lentz,* (Ohio) 68 N. E. 2d 339) clinging to the novel "dogma" in *Hughes* v. *Grossman, supra.* Is not the Kansas ultimatum "establishing" a NEW religion and interfering with the free exercise of the OLD Baptist Faith and worship in contravention of the 1st and 14th Amendments? Is this not attempting to supplant the historic Baptist faith with one the Kansas Courts prefer?

CONCLUSION.

From the foregoing, these petitioners, through their counsel of record, respectfully aver that the Kansas Supreme Court, by its affirmance of the judgment of the Trial Court below, has condoned and, as the highest State Court of Kansas, has exercised what, we urge, is an UNCONSTITUTIONAL power, and by their interference with the Kansas Baptist Churches, representing millions of American men, women and children and tens of thousands of churches in our land and country has, in effect, violated the above recited provisions of the United States Constitution and its "Bill of Rights," to-wit, the 1st, 5th and 14th Amendments.

Wherefore, it is respectfully submitted and prayed that the Petition for rehearing herein be granted and that the Writ of Certiorari to review the decision of the Supreme Court of Kansas be granted.

Respectfully submitted,

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November 24, A. D., 1953.